



September 1, 2000

Mr. Joe De Los Santos
Walsh, Anderson, Brown Schulze
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P. O. Box 460606
San Antonio, Texas 78246-0606

OR2000-3412

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138904.

The Pflugerville Independent School District (the "district"), which you represent, received a request for seven categories of information. You relate that you will release responsive information. However, you contend that certain evaluations and information from the personnel files of district employees are excepted from public disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 21.355 of the Education Code provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that an "administrator" is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is performing the functions of an administrator at the time of his or her evaluation. *Id.* at 4. Assuming the administrators in question held such certificates or permits at the time of the evaluations at issue, we conclude that the release of the requested evaluations are governed by section 21.355 of the Education Code. Accordingly the requested evaluations must be withheld from the public under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You contend that submitted social security numbers are made confidential under section 51.251 of the Occupations Code. The relevant footnote to that statute reads:

[s]ection 1 of Acts 1999, 76th Leg., ch 314 provides: “Confidentiality of Social Security Number. The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.”

Occ. Code § 51.251. This statute applies only to information maintained by a licensing agency. Since the district is not such a licensing agency, the submitted social security numbers are not made confidential by this statute.

However, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Also, social security numbers, as well as home addresses, home telephone numbers, or personal family members information of public employees is information subject to section 552.117 of the Government Code. This section requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024 prior to the date of the request for information. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

Release of employment eligibility verification forms, form I-9, is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R.

§ 274a.2(b)(4). Release of this document under chapter 552 of the Government Code would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that the form I-9 is confidential and must be withheld under section 552.101 of the Government Code.

Generally, any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Therefore, the submitted W-4 forms must be withheld under section 552.101 of the Government Code.

Medical records are subject to section 159.002 of the Occupations Code, the Medical Practice Act, which provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). The MPA provides specific release provisions. *See* Occ. Code §§ 159.004(5), 159.005(1) (providing that otherwise confidential medical information may be released to a person who bears a written consent of the patient, subject to certain requirements). We have marked the submitted materials to indicate the information which is subject to the MPA. You may release such records only in accordance with the MPA.

The Family Educational Rights and Privacy Act of 1974 (“FERPA”) U.S.C. 1232g, provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain

information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

Government Code section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code states that information contained in education records of an educational agency or institution are not subject to public disclosure except in conformity with FERPA. This office generally applies the same analysis under FERPA, sections 552.026 and section 552.114. *See e.g.* Open Records Decision No. 539 (1990).

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Since all handwritten documents created by students tends to identify the student, this information must be withheld. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments would make identity of student easily traceable and such comments are therefore excepted by statutory predecessor to section 552.114). The submitted information is marked to indicate that which must be withheld under FERPA.

Section 552.102(b) of the Government Code protects most information on a transcript from an institution of higher education that is maintained in the personnel files of professional public school employees. This section does not except from disclosure information on a transcript detailing the degree obtained and the curriculum pursued. Open Records Decision 526(1989). Therefore, the district may withhold all of the information in the submitted transcripts other than the degree obtained and the curriculum pursued, under section 552.102(b).

In conclusion, the district must withhold the submitted evaluations; social security numbers obtained or maintained under provision of law enacted on or after October 1, 1990; social security numbers, as well as home addresses, home telephone numbers, or personal family members information of public employees who elected non-disclosure of this information prior to the date the request for information was received; I-9 forms; W-4 forms; the submitted transcripts, other than information indicating the degree obtained and the curriculum pursued; and the information which identifies individual students. Information that is subject to the MPA may only be released as provided by the MPA. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

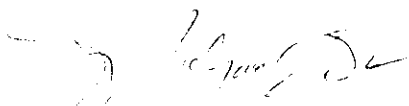
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138904

Encl Submitted documents

cc: Mr. Joe Franco
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(w/o enclosures)